REMARKS

Claims 1-25 are pending in the application and are presented for further consideration.

Claims 1-25 have been rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,089,269 to Noda et al. Applicant submits that the rejection of these claims is improper because: (1) Noda neither discloses nor suggests use of L-ascorbic acid in the amount of about 2 to about 25 wt % (as recited in independent claims 1 and 25); (2) Noda neither discloses nor suggests use of non-film forming cationic polymers and cationic surfactants (also recited in independent claims 1 and 25); and (3) the chemical ingredients and specific percentages of the same as recited in the claims operate to provide a chemical composition having superior stability results when compared to the Noda formulation, thereby evidencing creation a different chemical structure.

1. Noda fails to disclose or suggests L-ascorbic acid in the amount of about 2 to about 25 wt %.

The Examiner states that the examples in columns 49 and 50 of Noda teach the inclusion of L-ascorbic acid at 2 weight percent. This statement is incorrect. L-ascorbic acid is disclosed in Example 7-1 in column 50. However, the formulation disclosed in column 50, lines 60-69 refers to the formulation of microcapsules, which is only a part of the final mixture. The final mixture is listed in column 51, lines 15-29.

As shown in column 51, line 23, the microcapsules are only 10% of the final solution. Since the L-ascorbic acid is 2% of the microcapsule formulation and the microcapsules are only 10% of the final solution, then L-ascorbic acid is disclosed as being only 0.2% of the final solution. Applicant submits that this amount is clearly outside the range of 2 to 25 weight percent as recited in Applicant's independent claims 1 and 25.

Thus, Applicant submits that one having ordinary skill in the art would not be motivated from Noda to use the amount of L-ascorbic acid recited in these claims. For this reason, Applicant submits that its composition as recited in these independent claims is not obvious over Noda, and respectfully requests that the rejection of claims 1 to 25 on this basis be reconsidered and withdrawn.

2. Noda fails to disclose or suggest use of non-film forming cationic polymers and cationic surfactants.

Noda does not disclose non-film forming cationic polymers and surfactants. The purpose of Noda is to stabilize its composition by enclosing hydrophobic cosmetic components within microcapsules, i.e., a mechanism that requires the formation of an encapsulating film. Applicant's goal is to not form microcapsules. The cationic polymers and surfactants specifically and intentionally recited in Applicant's claims are non-film forming, and their function is to react with L-ascorbic acid in solution, i.e., something that cannot happen if there exists an intervening film.

Specifically, these non-film forming polymers and surfactants operate to stabilize L-ascorbic acid and, by that mechanism, prevent it's oxidation by a molecular interaction of oppositely charged particles. In contrast, Noda discloses a fundamentally different stabilizing mechanism; namely, one that depends on the use of film forming polymers to encapsulate rather than react with the L-ascorbic acid. Therefore, Noda does not disclose or even remotely suggest use of the non-film forming polymers and surfactants as recited in Applicant's claims.

Further, in view of Noda's objective of forming microcapsules, one having ordinary skill in the art would not be motivated to substitute non-film forming cationic polymers and surfactants in place of the polymers disclosed. For this reason, Applicant submits that its composition as recited in these independent claims is not obvious over Noda, and respectfully requests that the rejection of claims 1 to 25 on this basis be reconsidered and withdrawn.

3. Applicant's claimed formulation has far superior stability results when compared to the Noda formulation.

The different chemical ingredients and specific ingredient proportions, as recited in the claims, operate to produce a solution of L-ascorbic acid that is far more stable than that taught by Noda. The Examiner suggests that Applicant provide a side-by-side comparison of the instant formulation and the formulation of Noda, in order to show patentable distinction,

as well as to show the criticality of the claimed ranges. Applicant respectfully submits that such a comparison already exists and can be found in the references themselves.

Figure 3 of Noda graphically depicts the retention of L-ascorbic acid over time. This particular figure was selected as it reflects the stability of the only composition example including L-ascorbic acid. The graph plots the retention percentage (x-axis), which is defined as stability of L-ascorbic acid (See col. 51, lines 45-50), versus time. Similarly, Table 1 of the instant application (Spec., p. 20) shows the retention of L-ascorbic acid over time. In Table 1:

$[A]_1$ = initial ascorbic acid concentration, %
$[A]_{5,RT}$ = ascorbic acid concentration after 5 weeks, room temperature
$[A]_{10,RT}$ = ascorbic acid concentration after 10 weeks, room temperature

In Table 1, examples 3, 6-11 and 15-17 are within the parameters of the claimed composition. In comparing Figure 3 of Noda to Table 1 of the present invention, it is evident that in the composition of the present invention, the L-ascorbic acid is far more stable than in the Noda composition. According to Figure 3 of Noda, after 60 days, approximately 45% of the L-ascorbic acid remained stable. In comparison, Table 1 of Applicant's application shows virtually 100% stability after 70 days (10 weeks). The superior stability results of the claimed composition operate to evidence the criticality of using the specific chemical ingredients in the specific percentages as recited in Applicant's claims.

REMARKS

In view of the foregoing remarks, Applicant respectfully requests that the rejections of claims 1 to 25 under 35 U.S.C. §103 be reconsidered and withdrawn, and that the application be passed to allowance. Should there be any questions regarding this application, Examiner Pulliam is invited to contact the undersigned attorney at the phone number listed below.

Respectfully submitted,

Date: August 20, 2003

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